

Genetically Modified Food and Producer Liability Bill

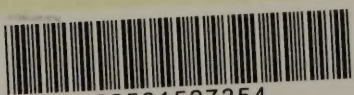
ARRANGEMENT OF CLAUSES

Clause

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Make further provision with respect to the safety of and liability for the deliberate release or marketing of genetically modified organisms and genetically modified food; to establish a genetically modified organism compensation fund; and for connected purposes.

A.D. 1999.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5 1.—(1) The Environmental Protection Act 1990 is amended as follows.

Risk assessments
of genetically
modified
organisms.

(2) After subsection (8) of section 111 (consents required by certain persons) insert—

1990 c. 43.

10 '(8A) Where there is a risk of significant damage to human health or the environment the Secretary of State shall not regard any lack of scientific certainty as a reason for not refusing the application or for not imposing any condition or limitation on a consent.'

(3) After section 126 (exercise of certain functions jointly by Secretary of State and Minister of Agriculture, Fisheries and Food) insert—

15 'Regulations: 126A.—(1) In making regulations under this Part the supplementary. Secretary of State shall—

(a) have regard to the precautionary principle; and

(b) insofar as the regulations prescribe—

20 (i) the manner in which assessments under subsection (1) or (3) of section 108 are carried out; or

(ii) the information to be contained in an application for consent under subsection (4) of section 111

25 have regard to relevant regulations under the Medicines Act 1968. 1968 c. 67.

(2) Regulations under the Medicines Act 1968 are relevant for the purposes of this section if they prescribe the manner in which assessments of the safety of medicinal products are to be carried out.’.

(4) In subsection (1) of section 127 (definitions), after the word ‘Kingdom’ insert—

“‘precautionary principle” means that where there is a risk of significant damage to human health or the environment lack of scientific certainty should not be used as a reason for not taking or for postponing measures to avoid or minimise such a risk;’.

Liability for
damage caused by
genetically
modified
organisms.
1990 c. 43.

2.—(1) A person (in this Act referred to as a “potential defendant”) who—

- (a) holds a consent under section 111 of the Environmental Protection Act 1990 (consents required by certain persons); or
- (b) holds a consent given by another Member State under Article 13(4) of Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms

shall be liable for any damage which is caused by the deliberate release or marketing of a genetically modified organism under the terms of that consent.

(2) Where liability under this section is incurred by a body corporate any director, manager, secretary or other similar officer of the body corporate shall be similarly liable unless he can show that he did everything in his power to prevent the deliberate release or marketing which caused the damage in question; and in this Act any reference to a potential defendant shall include reference to such a director, manager, secretary of other similar officer.

(3) Where damage to the environment outside the meaning of paragraphs (a) to (d) of section 3(1) occurs—

- (a) the Secretary of State; or
- (b) with the leave of the court, any other person

may apply to the court for damages to be awarded against a potential defendant.

(4) In reaching its decision on an application under subsection (3) the court may have regard to such matters as seem to it to be relevant, including—

- (a) the severity and detrimental effect of the damage to the environment;
- (b) any relevant profits made by a potential defendant; and
- (c) any relevant remuneration received by a potential defendant.

Meaning of
“damage”.

3.—(1) In this Act “damage” includes—

- (a) personal injury;
- (b) damage to property;
- (c) financial loss;
- (d) the cost of protecting against, preventing, remedying or rectifying environmental damage;

(e) damage to the environment within the meaning of subsection (2).

(2) In subsection (1)(e) and in section 2 “environment” shall be construed in accordance with article 2.10 of the Lugano convention on civil liability for damage resulting from activities dangerous to the environment.

5 4.—(1) Where proceedings take place under section 2 it shall be for the person proceeded against to prove that he did not cause the damage in question, but it shall not be open to a person within section 2(2) to prove that he did not cause the damage in question if the body corporate of which he is director, manager, secretary or other similar officer has caused such damage.

Proceedings.

10 (2) Where proceedings under section 2 are brought against more than one person it shall not be a requirement for the person bringing the proceedings to identify the person who caused the damage in question, provided that he can prove that one or more of the persons so proceeded against could have caused the damage.

15 (3) It shall be a defence for a person proceeded against to prove that the damage in question was caused by an exceptional case of force majeure.

5.—(1) A potential defendant shall indemnify—

Indemnities.

(a) any other person who deliberately releases or markets a genetically modified organism;

20 (b) any person who manufactures, processes or markets food, food ingredients or animal feed containing or derived from a genetically modified organism

against any civil liability where the genetically modified organism in question was first deliberately released or marketed by the potential defendant.

25 (2) A potential defendant shall indemnify against any civil liability any person who fails to label seeds, food, a food ingredient, or animal feed containing or derived from a genetically modified organism, but where the potential defendant can show that he took all reasonable steps to prevent such failure the indemnity shall not apply.

6.—(1) A potential defendant shall take out a policy of insurance against liability to pay compensation for damage.

Requirement to insure against liability.

(2) A person who fails to comply with the requirements of subsection (1) shall be guilty of an offence and shall be liable—

35 (a) on summary conviction, to a fine not exceeding level 3 on the standard scale;

(b) on conviction on indictment, to a fine not exceeding level 5 on the standard scale or to a term of imprisonment not exceeding 3 months or to both.

40 7.—(1) The Secretary of State shall within twelve months of the passing of this Act make a scheme providing for the payment of compensation in respect of damage caused by the deliberate release or marketing of a genetically modified organism.

Genetically modified organism compensation fund.

(2) A scheme under this section shall provide for compensation to be paid where liability for damage cannot be attributed to an identifiable potential defendant.

(3) Without prejudice to the generality, a scheme under this section may include provision—

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(a) establishing a compensation fund and arrangements for the administration of the fund;

(b) *defining those who shall be required to make payments into the fund and the basis on which such payments shall be calculated*; and

(c) without prejudice to subsection (2), setting out the circumstances in which payments shall or shall not be made out of the fund.

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(4) The power to make a scheme under this section includes the power to amend a scheme so made and shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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Short title.

8. This Act may be cited as the Genetically Modified Food and Producer Liability Act 1999.

Genetically Modified Food and Producer Liability

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BILL

To make further provision with respect to the safety of and liability for the deliberate release or marketing of genetically modified organisms and genetically modified food; to establish a genetically modified organism compensation fund; and for connected purposes.

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